IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12/08/2004

CORAM:

THE HONOURABLE MR.JUSTICE A.K.RAJAN

WRIT PETITION NO.16832 OF 1999

D.Subdarrraj .. Petitioner

-Vs-

1. The Joint Director of School
Education, Chennai-6.
2. The District Educational Officer,
Nagercoil,
Kanyakumari District.
3. The Chief Educational Officer,
Nagercoil,
Kanyakumari District.
4. The Correspondent & Manager,
Concordian Higher Secondary School,
Nagercoil.
5. The Indian Evangelical Lutheran Church,
Nagercoil Synod,
Nagercoil.
6. S.Dharmakkan,
Tamil Pandit,
Concordia High School,
Nagercoil.
(R6. impleaded as per order
dt.12.7.2002 in W.P.M.P.No.31178/2002) .. Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Mandamus as stated therein.

!For petitioner : Mr.M.Sriram

^For respondents 1 to 3 : Mr.Suresh Viswanath
Additional Govt. Pleader
For respondent No.4 : Mr.A.R.Gohulnath.
For respondents 5&6 : No appearance.

:ORDER
This writ petition has been filed by the petitioner praying to issue a writ of Mandamus directing the respondents 1 to 3 to pay the salary due to the petitioner and to regularise the service of the petitioner from the period from 6.6.91 to 1.6.97 with all attendant service benefits like back wages,

continuity to service, perquisites.

2. Heard the learned counsel for the petitioner as well as the learned counsel for the respondents 1 to 3 and 4. There is no representation for the 5th respondent. Learned counsel for the 6th respondent has made an endorsement that this writ petition may be dismissed as not pressed against the 6th respondent.

3. The petitioner was appointed as Senior Grade Tamil Pandit in the 4th respondent school run by the 5th respondent on 12.10.1981. Thereafter on 6.6.1991 he was transferred to Valliyur School run by the 5 th respondent. The petitioner has challenged the transfer order by filing Civil Suit in O.S.No.628 of 1991 on the file of the Additional District Munsif, Nagercoil, and obtained an order of interim order of stay of operation of the transfer order dated 6.6.1991. The said suit was ultimately dismissed. Aggrieved by the said judgment and decree, the petitioner has preferred an appeal in A.S.No.100 of 1992 on the file of the Sub-Court, Nagercoil and the said appeal was also dismissed. Aggrieved by the same, the petitioner has preferred second appeal in S.A.No.1701 of 1995 on the file of this Court. This Court by its judgment and decree dated 23.6.1997 has passed a compromise decree according to the compromise memo. filed by the parties praying to pass a decree in terms of compromise memo. The terms of compromise decree is as follows:

1. that 1st respondent-Management do (agree to) promote the appellant in the forthcoming vacancy in the post of Post Graduate Teacher (history) in the same management;
2. that the lst respondent do claims salary from the Education Department and to pay the salary to the appellant from 1.6.92 to till date;
3. that the lst respondent do negotiate with the Education department to get benefits such as salary etc., from 6.6.91 to 31.5.92 to the appellant.
4. that the lst respondent the Management do treat the service of the appellant as continuity of service without any interruption or break; and
2) that the appellant do withdraw the suit in O.S.No.628/91 on the file of the Court of District Munsif, Nagercoil.

4. In the meanwhile, by order dated 23.5.1994 the 5th respondent has passed an order to the effect that the petitioner was reinstated as Tamil Pandit in the vacancy caused by the transfer of the very same petitioner by an earlier order. Pursuant to the said order the petitioner had joined duty on the F.N. of 1.6.1994. Therefore, the 5th respondent who had reinstated the petitioner even prior to the compromise decree in the above said second appeal is bound to pay salary to the petitioner from 1.6.1994 onwards. Admittedly the salary of the petitioner was not paid from 1.6.1994. Therefore, the 5th respondent is bound to pay salary to the petitioner from 1.6.1994 to 1.6.1997.

5. In so far as the claim of payment of salary to the petitioner from 6.6.1991 to 31.5.1994, the 5th respondent/School authorities by a letter undated addressed to the second respondent, thereby informing about the compromise decree passed by this Court in the said second appeal, further extracting the terms of compromise and requesting them to sanction the salary

to the petitioner for the said period so as to comply with the terms of compromise decree. Therefore, the 5th respondent has discharged his obligation as per the terms of compromise decree when it had written the above letter to the second respondent.

6. The prayer in the writ petition is for a direction to the respondents 1 to 3 to pay the salary due to the petitioner and to regularise the service of the petitioner for the period from 6.6.1991 to 1.6.19 97 with all attendant service benefits like back wages continuity of service of benefits perquisites etc.

7. The Respondents 1 to 3 have nothing to do with the entire proceedings and they are not responsible for the transfer of the petitioner and it is not even the case of the petitioner that they approved the transfer of the petitioner. Therefore, the Respondents 1 to 3 are not liable to pay salary due to the petitioner. Therefore, so far as the prayer against the respondents 1 to 3 is concerned, this writ petition is dismissed as not maintainable.

8. However, it is only the Respondents 4 and 5 are the authorities for the entire proceedings and they only responsible for the transfer of the petitioner and hence, they are liable to pay salary to the petitioner. Therefore, there will be a direction to the respondents 4 and 5 to pay salary due to the petitioner from 1.6.1994 to 1.6.19 97.

9. The consequential prayer of the petitioner to regularise the service of the petitioner from 6.6.1991 to 1.6.1997 with all attendant service benefits like continuity of service of benefits perquisites etc., is covered by the terms of compromise decree itself, whereby the 5th respondent has

agreed to regularise the service of the petitioner with continuity of service without any interruption or break. Therefore, it is for the 5th respondent to comply with the said terms of compromise decree.

In the result, with the above observations, this writ petition is disposed of. However, in the circumstances of the case, there will be no order as to costs.

Index :Yes
Internet:Yes
gr.

To

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